

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

January 8, 2010

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.:09KD-127

Kauai

RE-SUBMITTAL:

- (1) Grant of Perpetual, Non-Exclusive Easement to Kauai Island Utility Cooperative and Hawaiian Telcom Inc. for Utility Purposes Covering Tax Map Keys: (4) 4-1-3:portion 44 and 17;
- (2) Issuance of a Right-of-Entry to the Department of Transportation, Highways Division for Construction, Staging and Work Area Purposes Covering Tax Map Keys: (4) 4-1-3:44, 17 and 4-1-4:portion 21, 22, 24;
- (3) Cancellation of Revocable Permit No. S-7444 Covering Tax Map Key: (4) 4-1-3:17; and
- (4) Issuance of a Revocable Permit to the Department of Transportation, Highways Division for Field Office, Staging and Work Area Purposes Covering Tax Map Key:(4) 4-1-3:17, Located at Kawaihau, Kauai.

BACKGROUND:

Department of Transportation's (DOT) Kuhio Highway Project NH-056-1 (50) involves the widening of Kuhio Highway to add a second southbound travel lane within their existing right-of-way, extension of a right-turn storage lane on Kuamoo Road, and accessory intersection improvements. Improvements to Kuhio Highway are needed to address existing traffic congestion beginning at the Kapaa Bypass Road intersection to Kuamoo Road, address future projected conditions from increased traffic along the highway, and improve safety for pedestrians, joggers, and bicyclists. The addition of a southbound travel lane would provide increased roadway capacity through this corridor.

Previously, the Land Board at its meeting of February 10, 2006 (D-3), approved of and recommended to the Governor, setting aside Parcel 39 to DOT for roadway purposes which includes this project. However, to mitigate concerns by the U.S. Fish and Wildlife Service with effects on endangered seabirds due to existing overhead utility lines and associated poles, the DOT will relocate such utility lines underground as part of mitigative measures.

This relocation of utilities underground has made it necessary to utilize State properties identified as Parcels 44 and 17 as part of this improvement for Kauai Island Utility Cooperative (KIUC) and Hawaiian Telcom. Some of the utility relocation improvements will also be placed into Parcel 39. Storage lane improvements along Kuamoo Road will

involve the need for temporary construction parcels utilizing State properties identified as Parcels 21, 22, and 24. State Parcel 17 will also be utilized as a temporary construction parcel for utilities relocation. Further details are provided as follows:

- 1) TMK 4-01-03: 17. Used as a driveway entrance to the Coco Palms Resort property and vehicular parking area. The portion of the property where the driveway is will be used for constructing electrical lines underground and serve as an electrical switch box for KIUC (Figure 1).
- 2) TMK 4-01-03: 44. An irregular-shaped parcel comprised of a strip portion that was formerly used as a cane haul road and railroad right-of-way, and a triangular-shaped portion used by the County as a wastewater pump station site. Relocated electrical lines would be located within the strip portion adjacent to an existing sewer line along with the triangular-shaped portion. An electrical switch box would be located within the triangular portion of the parcel (Figure 2).
- 3) TMK 4-01-04: 21. A parcel used for existing commercial related uses. A portion of the site will be used as a construction parcel for the contractor. There will be no grading or subsurface trench work done at this parcel (Figure 1).
- 4) TMK 4-01-04: 22. A strip parcel used as an unlined drainageway on the southern side of Kuamo'o Road. This drainageway is normally dry and overgrown with trees and vegetation. Surface drainage from Coco Palms Resort only discharges into this drainageway when water is manually pumped into the Kuamo'o Road culvert because the culvert opening is above the Resort's drainage canal. A portion of this parcel will be used for culvert improvements and as a construction parcel for the installation of erosion control measures (Figure 1). There will be no grading or subsurface trench work done at this parcel.
- 5) TMK 4-01-04: 24. A parcel used for the Kaumuali'i Section of the Wailua River State Park. Kuamo'o Road was built on fill material and is thus a few feet higher in elevation than this park site. Based upon consultation and agreement with the Division of State Parks, a portion of this site will be filled to provide a gradual transition in elevation from the park site to Kuamo'o Road. Several existing coconut trees within the affected area have already been topped to only about 10 feet in height by the Division of State Parks. DOT will cut the remaining stumps and grind it down to the ground, and plant new 10- to 12-foot-tall coconut tree as part of park maintenance improvements that were already planned by the Division of State Parks for this park site saving that department associated costs. DOT will also regrass the area filled and repave the driveway. This will be done at no cost to State Parks. A portion of the parcel will also be used by the contractor to store equipment and materials.

The Land Board at its meeting of October 23, 2009, under agenda Item D-1, deferred DOT's request for a grant of perpetual, non-exclusive easement to Kauai Island Utility Cooperative and Hawaiian Telcom Inc. for utility purposes; issuance of a right-of-entry to the Department of Transportation, Highways Division for construction, staging and work area purposes; cancellation of Revocable Permit No. S-7444; issuance of a revocable permit to the Department of Transportation, Highways Division for field office, staging and work area purposes. The Board deferred this matter until such time that DOT is able to provide the information requested by various testifiers who suggested that an environmental assessment or environmental impact statement be prepared for the affected parcels if any of those parcels were not included in an environmental document prepared for the highway widening project. Other concerns regarding burials and cultural sensitivity of the Wailua area were expressed.

Wilson Okamoto Corporation on behalf of Department of Transportation filed a Final Environmental Assessment (Final EA) for the Kuhio Highway Short-Term Improvements, Kuamo'o Road to Temporary Bypass Road, Federal Aid Project No. 56-A-01-06 with the Office of Environmental Quality Control in September 2009. The DOT determined that this project will not have significant environmental effects and has issued a FONSI (finding of no significant impact). The notice was published in the September 23, 2009 issue of OEQC's The Environmental Notice. The 30-day period expired on October 23, 2009, and we are aware that a legal challenge was filed at the Circuit Court regarding this FONSI determination. In response to the testifiers, all of the State parcels under this request were covered in the Final EA. Therefore, any additional Chapter 343 environmental document covering these same parcels is not necessary unless otherwise ordered by a Court.

DOT and their consultants are aware of the Wailua Complex of Heiau, and project effects on this complex were addressed in the Final EA, SHPD was consulted, and archaeological studies were conducted and included within the Final EA. The cumulative effects of other developments occurring within the project area were also addressed in the Final EA. DOT has conducted several activities to: 1) identify historic properties and traditional cultural practices that may be affected, 2) assess the project impacts, and 3) identify measures to mitigate such impacts. Presently, there were no known historic properties identified within the project's area of potential affect. There are no known traditional cultural practices occurring within the existing State DOT right-of-way for Kuhio Highway and Kuamoo Road.

There is the potential for subsurface sites being encountered during construction activities and the general project area is culturally sensitive based upon comments received. Additional conditions and measures are planned to be implemented by DOT to further implement precautionary actions to minimize potential project effects on possible subsurface sites (burials). They are as follows:

- 1) Conduct additional subsurface testing within the project corridor.
- 2) Construction of the project will proceed under an archaeological monitoring program.
- 3) Develop a plan addressing burial treatment protocols in the event burials are

- encountered.
- 4) A cultural monitor will be allowed to serve as a liaison between the contractor and concerned community to provide increased level of communication. OHA will develop a framework for their selection and management of a cultural monitor, and DOT will reimburse OHA for compensation costs.

CONCLUSION:

DOT and their consultant have adequately explained the project and have complied with Hawaii's EIS laws. There are no known historic properties identified within the project's area of potential affect. There are no known traditional cultural practices occurring within the existing State DOT right-of-way for Kuhio Highway and Kuamoo Road. Additional conditions and measures are planned to be implemented by DOT to further implement precautionary actions to minimize potential project effects on possible subsurface sites (burials).

There is no change from our October 23, 2009 Land Board submittal (Exhibit A). In closing, staff is recommending the Land Board approve DOT's request.

RECOMMENDATION: That the Board:

1. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a perpetual, non-exclusive easement to Kauai Island Utility Cooperative and Hawaiian Telcom Inc. covering the subject area for utility purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current perpetual easement document form, as may be amended from time to time;
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Authorize the issuance of a right-of-entry permit to the Department of Transportation, Highway Division for construction, staging and work area purposes, as cited above, which are by this reference incorporated herein and further subject to the following:
 1. The standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time; and
 2. Such other terms and conditions as may be prescribed by the Chairperson

to best serve the interests of the State.

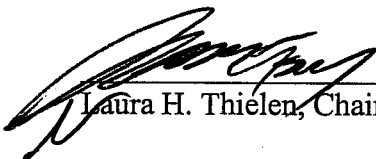
3. Authorize the termination of Revocable Permit No. S-7444.
4. Authorize the issuance of a revocable permit to Department of Transportation, Highways Division covering the subject area for field office, staging and work area purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - a. The standard terms and conditions of the most current revocable permit form, as may be amended from time to time;
 - b. Review and approval by the Department of the Attorney General; and
 - c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Charlene E. Unoki
Assistant Administrator

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson




Exhibit 1

Figures Showing Subject Parcels

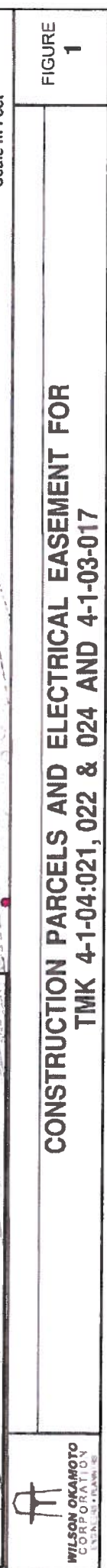


FIGURE 1

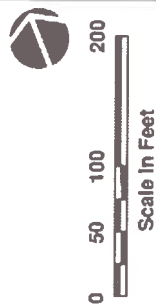
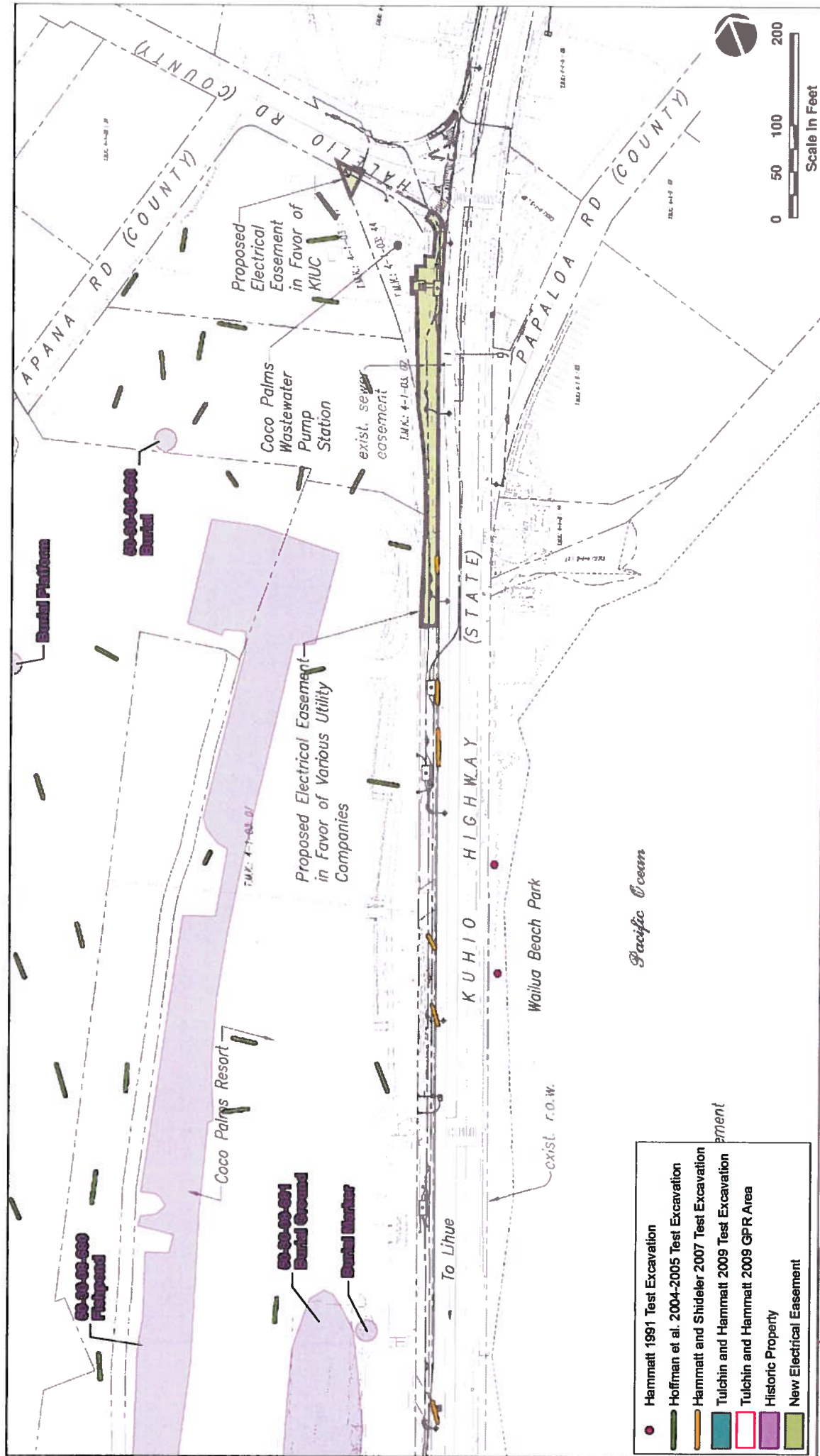


FIGURE
2

ELECTRICAL EASEMENTS FOR TMK 4-1-03:044

Exhibit 2

**Letters Documenting Agency Review and Consultations
Regarding Historic Properties**

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

STATE HISTORIC PRESERVATION DIVISION
601 KAMOKILA BOULEVARD, ROOM 555
KAPOLEI, HAWAII 96707

ALLAN A. SMITH
INTERIM CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

July 18, 2007

Hallett Hammatt, Ph.D.
Cultural Surveys Hawai'i
Post Office Box 1114
Kailua, Hawai'i 96734

LOG: 2007.2362
DOC: 0707NM23
Archaeology

Dear Dr. Hammatt:


Subject: Chapter 6E-42 - Historic Preservation Review - Archaeological Assessment for Kuhio Highway Short-Term Improvements - Kuamo'o Road to the Temporary Kapaa ByPass Road Wailua Ahupua'a Puna District Koloa, Kauai (CSH, Hammatt and Shideler June 2007)
TMK: [4] 4-1-003: 039 por.

Thank you for submitting the aforementioned archaeological assessment by CSH, Hammatt and Shideler (2007). Ten backhoes trenches were dug along Kuhio Highway. In trench 9, a remnant of a cultural layer identified as site 50-30-08-1711 (Buffum and Dega 2002) was found. No other historic properties or burials were found. We concur with your recommendation of archaeological monitoring during the construction of the widening of Kuhio highway. Mitigation for inadvertent discoveries would be covered by archaeological monitoring. Therefore we recommend the following conditions be attached to this permit for a "no adverse effect" on historic properties:

An archaeological monitoring plan shall be submitted to the State Historic Preservation Division for review and approval. Archaeological monitoring shall take place during all subsurface construction work due to the high probability of finding human burials. A draft monitoring report shall be submitted 90 days after the completion of fieldwork for review and approval to the State Historic Preservation Division.

The assessment report is acceptable. If you have any questions, please call Nancy McMahon, the Kauai and Molokai Archaeologist who reviewed this plan at 808.742.7033.

Sincerely,


Melanie A. Chinen, Administrator
State Historic Preservation Division

NM:

c: DLNR -Kauai Land Division
DOT - Highways Division
County - Public Works and Planning Departments
KHPRC

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

STATE HISTORIC PRESERVATION DIVISION
601 KAMOKILA BOULEVARD, ROOM 555
KAPOLEI, HAWAII 96707

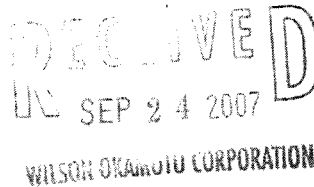
LAURA H. THIELEN
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KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

September 21, 2007

Ron Sato, Senior Planner
Wilson Okamoto Corp
1907 South Beretania Street, Suite 400.
Honolulu, Hawaii 96826



LOG NO: 2007.2770
DOC NO: 0709NM12
Archaeology

Dear Mr. Sato:

**SUBJECT: Chapter 6E-42 - Historic Preservation Review – Pre- Assessment Consultation for
Kuhio Highway Short Term Improvements Kuamoo Road to Temporary By-Pass
Road FAP No. NH-056-I(50)
Wailua, Kawaihau District, Island of Hawai'i
TMK: (4) 4 various**

The aforementioned permit is for Kuamoo Road improvements to the existing right –turn storage lane.

We believe that “no historic properties will be affected,” because:

- ☒ Intensive cultivation has altered the land
- ☒ Residential development/urbanization has altered the land
- ☒ Previous grubbing/grading has altered the land
- ☐ An accepted archaeological inventory survey (AIS) found no historic properties
- ☐ SHPD previously reviewed this project and mitigation has been completed
- ☐ Other:

In the event that historic resources, including human skeletal remains, are identified during routine construction activities, all work needs to cease in the immediate vicinity of the find, the find needs to be protected from additional disturbance, and the State Historic Preservation Division, Kauai Section, needs to be contacted immediately at (808) 742-7033.

Aloha,

Melanie Chinen, Administrator
State Historic Preservation Division

NM:jen

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

STATE HISTORIC PRESERVATION DIVISION
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HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

August 18, 2009

Mr. David Shideler
Cultural Surveys Hawai'i
P. O. Box 1114
Kailua, Hawai'i 96734

LOG NO: 2009.3416
DOC NO: 0908NM24
Archaeology

Dear Mr. Shideler:

**SUBJECT: 6E-8 Historic Preservation Review--
Archaeological Assessment (AA)--
For the State DOT Kuhio Hwy Short-Term Improvements Project
Wailua Ahupua'a, Lihue, Kaua'i Island, Hawai'i
TMK: (4) 3-9-006: 026**

Thank you for the opportunity to review this DRAFT AA (*Archaeological Assessment for the State DOT Kuhio Hwy Short-Term Improvements Project, Wailua Ahupua'a, Lihue District, Kaua'i Island, Hawai'i TMK: (4) 3-9-006: 026: [Tulchun and Hammatt, PhD, CSH, July 2009]*)

This survey was for 1.7 linear miles along Kuhio Hwy with GPR being conducted in 960 square feet with 5 trenches. No historic properties were found.

This report is accepted and it meets the minimum requirements for compliance with 6E-8 and Hawaii Administrative Rules (HAR) §13-13-276 *Rules Governing Standards for Archaeological Inventory Studies and Reports*.

This Report recommends archaeological monitoring since the area is a high cultural sensitive area. We concur with this recommendation.

As this subject archaeological assessment report has received final acceptance please send one hardcopy of the document, clearly marked FINAL, along with a copy of this review letter and a text-searchable PDF version on CD to the attention of "SHPD Library" at the Kapolei SHPD office.

Please call me at (808) 692-8015 if there are any questions or concerns regarding this letter,

Aloha,

A handwritten signature in cursive script, reading "Nancy A. McMahon".

Nancy A. McMahon (Deputy SHPO),
Archaeology and Historic Preservation Manager



U.S. Department
of Transportation
**Federal Highway
Administration**

Hawaii Federal-Aid Division

October 13, 2009

300 Ala Moana Blvd., Rm 3-306
Box 50206
Honolulu, HI 96850
Phone: (808) 541-2700
Fax: (808) 541-2704
<http://www.fhwa.dot.gov/hidiv>

In Reply Refer To:
HDA-HI

CERTIFIED MAIL RETURN RECEIPT
7002 0860 0007 4381 1308

Ms. Laura Thielen, Chairperson
Department of Land and Natural Resources
State of Hawaii
P.O. Box 621
Honolulu, HI 96809

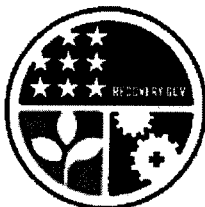
Dear Ms. Thielen:

Subject: Kūhiō Highway Short-Term Improvements; Kuamo'o Road to Kapa'a Temporary
Bypass Road Project (FAP No. NH-056-1(50))
Wailua, Island of Kaua'i
Section 106 Consultation

The State of Hawaii, Department of Transportation (DOT), Highways Division is proposing to implement the Kūhiō Highway Short-Term Improvements Project that is located in Wailua of the Island of Kaua'i. The Federal Highway Administration (FHWA) is proposing to authorize construction of this undertaking.

This letter with attachments is being submitted to document consultation efforts conducted for this undertaking pursuant to Section 106 of the National Historic Preservation Act and the Advisory Council on Historic Preservation's regulations for Protection of Historic Properties (36 CFR, Part 800). We have applied the criteria of effect based upon 36 CFR §800 for the proposed undertaking, and have determined that it will have "no adverse effect" on historic properties.

Based upon consultations efforts and studies conducted, there are no known historic properties within the area of potential effect and no known historic properties that would be negatively affected by the project improvements. However, there is a potential for subsurface sites being encountered during construction activities, and the general project area is culturally sensitive. Therefore, in making our determination, we are proposing to carry out the following actions to avoid adverse effects on potential subsurface sites.



Proposed Measures

1. Additional subsurface testing would be conducted within the project corridor. Any burials found during this process will be treated as a known burial.
 - a. Testing would occur during the construction phase of the project and include the following areas:
 - 1) A State-owned strip parcel (TMK 4-1-03: 039) situated between the Coco Palms Resort and Kūhiō Highway.
 - 2) A section along the mauka side of the highway from the intersection of the Temporary Kapa'a Bypass Road northbound to a proposed electrical riser pole near Aleka Loop.
 - 3) Along undeveloped areas of the mauka side of the highway where underground utilities are planned within a privately-owned parcel identified as TMK 4-3-10: 001 located north of Haleilio Road.
 - b. A plan covering the additional testing scope of work will be prepared and submitted to the State Historic Preservation Division (SHPD) for review and approval.
 - c. A new inventory survey report would be prepared documenting the results of this additional testing.
 - This report will be submitted to SHPD for review and approval.
2. Construction of the project will proceed under an archaeological monitoring program.
 - a. The SHPD approved Archaeological Monitoring Plan (March 2009) for the highway widening improvements (DOC: 0903WT117) will be amended to incorporate on-site monitoring for the relocation of existing overhead utilities underground.
 - b. The amended monitoring plan will be submitted to SHPD for review and approval.
3. Develop a plan addressing burial treatment protocols in the event burials are encountered.
 - a. Procedures for "previously identified" and "inadvertent discovery" burials should be addressed.
 - The intent is to identify procedures to ensure burials are properly protected and cared for while formal decisions regarding treatment are developed.
 - b. The plan would be developed in consultation with the Office of Hawaiian Affairs (OHA), SHPD, the Kaua'i / Ni'ihau Islands Burial Council, and pertinent Native Hawaiian organizations.
 - c. The protocols plan would be submitted to OHA, SHPD, and the island burial council for concurrent review.
 - d. The plan's preparation, review, and revision will be completed within a total timeframe of four (4) months.
 - Written notification to OHA and SHPD would be provided to document initiation of this process and completion date.

4. OHA will develop a framework for their selection and management of a cultural monitor assisting on this project to serve as a liaison between the contractor and concerned community to provide increased level of communication.
 - a. The cultural monitor will be hired by OHA and serve under OHA's management and responsibility.
 - OHA will provide a written job description and framework for this monitor's responsibilities and duties to the State DOT and FHWA.
 - b. The monitor will either be on-site or on-call for monitoring subsurface construction work (ex. trench digging).
 - The cultural monitor should coordinate one's activities with the contractor and archaeologist who are responsible for on-site decisions.
 - The monitor should follow all construction safety procedures and be equipped with personal protective equipment.
 - c. The State DOT will reimburse OHA for compensation associated with this monitor.
 - d. A report documenting the monitor's activities will be submitted from OHA to the State DOT and FHWA.
 - 1) Daily monitoring data logs will be prepared by the monitor.
 - 2) The report should include a qualitative narrative of monitoring activities, data logs, and recommendations that could be applied to future projects.

We request your concurrence with the proposed no adverse effect determination for this project. Enclosed is documentation supporting this determination for your review. This documentation was prepared based upon your department's guidelines for Section 106 submissions.

We would greatly appreciate your response within 30 days of receipt of this letter. If you have any questions, please contact me at 541-2700, ext. 2305 if have any questions regarding this consultation request.

Sincerely yours,

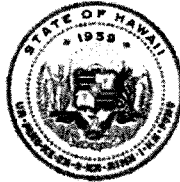


Pat V. Phung, P.E.
Transportation Engineer

Enclosure: Documentation

cc: Darell Young, HDOT, HWY-P
Ronald Sato, Wilson Okamoto Corporation

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

STATE HISTORIC PRESERVATION DIVISION
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COMMISSION ON WATER RESOURCE MANAGEMENT

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FIRST DEPUTY

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HISTORIC PRESERVATION
KAIHIOLOANE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

October 22, 2009

Mr. Pat Phung, P.E.
Transportation Engineer
US DOT- FHWA
300 Ala Moana Blvd, Room 3-306
Honolulu, Hawai'i 96850

LOG NO: 2009.4462
DOC NO: 0910NM34
Archaeology

Dear Mr. Phung:

**SUBJECT: National Historic Preservation Act – Section 106 Review—
Proposed Kūhiō Highway Short Term Improvements – (FAP No NH-056-1(50))
Wailua Ahupua'a, Puna District, Kaua'i
TMK: (4) 4-1-003: 017, 039, 044 and 4-3-002: 006 por.**

Thank you for providing the opportunity to review your documentation on your determination that the Kuhio Highway Short-Term Improvement Projects have a "no adverse effect" determination. This project is the creation of short-term improvements to the Kūhiō Highway between Kuamo'o Road on the south and the Temporary Kapa'a Bypass Road on the north. We concur that there are no known historic properties within the APE but there is certainly the potential for subsurface sites or human remains. The project area is located in an archaeologically sensitive area fronting the Coco Palms Resort where previous archaeological inventory surveys recorded a widely dispersed buried cultural layer and numerous human burials on the grounds of the resort.

To address the possibilities of finding historic properties or human remains, the FHWA is proposing additional archaeological inventory testing, archaeological monitoring (AMP approved March 2009 DOC:0903WT117), developing a burial treatment plan and hiring a cultural monitor under OHA's directions. Based on the documentation and the stated FHWA proposal, we concur with your determination that this project will have "no adverse effect" on historic properties.

If you have any questions please call me at 692-8015.

Aloha,

A handwritten signature in cursive script that reads "Nancy A. McMahon".

Nancy A. McMahon (Deputy SHPO)
State Historic Preservation Officer

Cc: Doug Haigh, County of Kauai
Ron Sato, Wilson Okamoto Corp.
Darrell Young, DOT

EXHIBIT "A"

October 23, 2009 Board Submittal

DEFERRED

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

October 23, 2009

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.:09KD-127

Kauai

Grant of Perpetual, Non-Exclusive Easement to Kauai Island Utility Cooperative and Hawaiian Telcom Inc. for Utility Purposes; Issuance of a Right-of-Entry to the Department of Transportation, Highways Division for Construction, Staging and Work Area Purposes; Cancellation of Revocable Permit No. S-7444, Issuance of a Revocable Permit to the Department of Transportation, Highways Division for Field Office, Staging and Work Area Purposes, Kawaihau, Kauai, Tax Map Key:(4) 4-1-3:portion of 44, 17 and 4-1-4:portion of 21, 22, 24.

APPLICANT:

Department of Transportation-Highway Division on behalf of Kauai Island Utility Cooperative (KIUC), whose mailing address is 4463 Pahee Street Suite 1, Lihue, Hawaii 96766-2000 and Hawaiian Telcom Inc. whose mailing address is Box 2200, Honolulu, Hawaii 96841.

Department of Transportation-Highway Division, whose mailing address is 601 Kamokila Boulevard, Kapolei, Hawaii 96707

LEGAL REFERENCE:

Section 171-13, 55, 95, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Wailua situated at Wailua, Kawaihau, Kauai, identified by Tax Map Key: (4) 4-1-3:portion of 44, 17 and 4-1-4:portion of 21, 22, 24, as shown on the attached map labeled Exhibit A and B.

AREA:

Easement 3 = 2022 square feet, more or less.

Deferred
APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
October 23, 2009

D-1

EXHIBIT "A"

Easement 4 = 7445 square feet, more or less.

Easement 5 = 435 square feet, more or less.

Construction Parcel 1 = 1,521 square feet, more or less

Construction Parcel 2A = 480 square feet, more or less

Construction Parcel 4 (Rev.1) = 13,004 square feet, more or less

Revocable Permit Area = 37,244 square feet, more or less

ZONING:

Tmk: (4) 4-1-3:17	State Land Use District: County of Kauai CZO:	Urban Open
Tmk: (4) 4-1-3:44	State Land Use District: County of Kauai CZO: Neighborhood	Urban Commercial
Tmk: (4) 4-1-4:22	State Land Use District: County of Kauai CZO: Family Residential	Urban Improved Single
Tmk: (4) 4-1-4:21	State Land Use District: County of Kauai CZO:	Urban Apartment
Tmk: (4) 4-1-4:24	State Land Use District: County of Kauai CZO: Family Residential	Urban Improved Single

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

Tmk: (4) 4-1-03:17

Encumbered by Revocable Permit No. S-7444, Coco Palms Ventures LLC, Permittee, for parking and landscaping purposes.

Encumbered by Deed bearing Land Office Deed S-12850, Coco Palms Ventures LLC, Grantee, easement for road right-of-way, 25 feet wide. The Board at its meeting held on August 28, 2009(D-3), approved the cancellation of the easement.

Tmk: (4) 4-1-03:44

Encumbered by Governor's Executive Order No. S-2744, County of Kauai for Wailua sewage pump station and emergency power generator site purposes.

Encumbered Grant of Easement No. S-4244, Coco Palms Ventures LLC, Grantee, for sewer easements Part 1 & 2. Easement to expire on May 12, 2034.

Tmk: (4) 4-1-4:22

Unencumbered

Tmk: (4) 4-1-4:21

Encumbered by General lease No. S-3941, Smiths's Motorboat Service, Inc., Lessee, for rehabilitation of the disabled and handicapped and related activities. Lease to expire on November 15, 2020.

Tmk: (4) 4-1-4:24

Encumbered by Governor's Executive order No. 1771, Department of Land & Natural Resources, Division of State Parks for territory park system (Wailua).

Encumbered by Grant of Easement bearing Land Office Deed No. S-26124, County of Kauai, Grantee, to operate, use and maintain a drainage system in connection with the Wailua Drainage Canal, together with the right of ingress and egress for said purposes.

CHARACTER OF USE:

For Easement 3, 4, 5: Right, privilege and authority to construct, use, maintain, repair, replace and remove telecommunication and electrical transmission lines, poles, guy wires and anchors over, under and across State-owned land.

For Construction Parcels 1, 2A, and 4 (Rev.1): Staging and work areas.

For Revocable Permit Area: Field office, staging and work area.

EASEMENT COMMENCEMENT DATE:

To be determined by the Chairperson.

EASEMENT CONSIDERATION:

Gratis. Department of Transportation is requesting the consideration be gratis because they have to move (relocate) the existing lines in Kuhio Highway in accommodate their highway widening project: NH-056-1(50).

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The Final Environmental Assessment for the subject project was published in the OEQC's Environmental Notice on September 22, 2009 with a finding of no significant impact (FONSI).

DCCA VERIFICATION:

Kauai Island Utility Cooperative

Place of business registration confirmed:	YES
Registered business name confirmed:	YES
Applicant in good standing confirmed:	YES

Hawaiian Telcom Inc.

Place of business registration confirmed:	YES
Registered business name confirmed:	YES
Applicant in good standing confirmed:	YES

APPLICANT REQUIREMENTS:

Department of Transportation, Highways Division shall be required to:

- 1) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost; and
- 2) Department of Transportation, Highway Division is required to obtain concurrence from County of Kauai.

REMARKS:

Department of Transportation's (DOT) widening of Kuhio Highway Project NH-056-1 (50) has made it necessary to relocate KIUC and Hawaiian Telcom's lines from Kuhio Highway and into State properties identified as Parcels 44 and 17. Some of the lines will be relocated into Parcel 39. Previously, the Land Board at its meeting of February 10, 2006 (D-3), approved of and recommended to the Governor, setting aside Parcel 39 to DOT for roadway purposes. There is a major traffic flow problem traveling westbound on Kuhio Highway beginning at the Kapaa Bypass Road intersection to the Wailua River Bridge. It was suggested that an additional travel lane and increasing the width of the existing Wailua

Bridge, could improve the westbound traffic flow. The State property (Parcel 39) is approximately 18 feet wide and was believed to be able to accommodate an additional lane and improvements. At this time, the set aside has not been completed.

DOT is requesting the easement consideration be gratis because they have to move (relocate) the existing lines (of KIUC and Hawaiian Telcom) in Kuhio Highway as part of this highway widening project: NH-056-1(50).

Additionally, DOT plans to improve Kuamoo Road by constructing a culvert extension, storage lane within the right-of-way of Kuamoo road, and a sloped bank adjacent to the paved storage lane and the Wailua River State Park. These areas are under the jurisdiction of the Division of State Parks. Wailua River State Park is a 6(f) protected property under the Land and Water Conservation Fund (LWCF) Program. Therefore, DOT has entered into an agreement with DLNR for the monitoring and maintenance of the 50-foot wide slope for a period of one year. Exhibit C.

Comments were solicited from:

Div of Aquatic Resources	No response
Dept of Health	No response
County Dept of Planning	No response
County Dept of Public Works	No response
Commission on Water Resource Management	No objections or comments
Historic Preservation	No historic properties will be affected because residential development/urban has altered the land.
Office of Hawaiian Affairs	Exhibit D
County Dept of Water	DOW has existing water mains along Kuamoo Road adjacent to the Parcels 21, 22 and 24. Any new request for water service will be dependent on the adequacy of the source, storage and transmission facilities existing at the time.

We have included DOT's response to OHA's questions as Exhibit E.

DOT is requesting a construction right-of-entry because of the strict timelines in place for this project. Additionally, 3 separate areas are needed by DOT for their staff and contractors, to be used as staging and work areas. Construction Parcel 1 is unencumbered. Construction Parcel 2A is located within Smith's Motorboat Service lease. Permission has been obtained. Construction Parcel 4 (Rev.1) is located within Wailua River State Park. Permission has been obtained.

The requested area for the revocable permit is larger and can best accommodate this DOT project. DOT staff and contractors will use this property as a field office, staging and work area. DOT is requesting the monthly rent be gratis because this project is to improve traffic flow on Kuhio Highway beginning at the Kapaa Bypass Road intersection to the Wailua River Bridge.

Currently, the tenant is not utilizing Parcel 17 since the adjacent hotel renovation project (located on private property) stopped in 2008. Furthermore, we understand Coco Palms Ventures LLC has placed their hotel property on the market. If Land Board approval is obtained, staff will be terminating Revocable Permit No. S-7444.

As background, the Land Board at its meeting of August 28, 2009 (D-3), approved Coco Palms Ventures LLC request for a 10-year, term, non-exclusive access easement. There should be no conflict on the use of Parcel 17. Coco Palms Ventures LLC has other entry points. Staff can coordinate with the parties, if Coco Palms Ventures LLC consultants need to enter Parcel 17 to mark the easement alignment. In conclusion, staff believes the DOT project is important to Kauai residents and its economy. The proposed use is temporary. The State property will be returned to the Department in better condition than what it is currently in.


RECOMMENDATION: That the Board:

1. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a perpetual, non-exclusive easement to Kauai Island Utility Cooperative and Hawaiian Telcom Inc. covering the subject area for utility purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current perpetual easement document form, as may be amended from time to time;
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Authorize the issuance of a right-of-entry permit to the Department of Transportation, Highway Division for construction, staging and work area purposes, as cited above, which are by this reference incorporated herein and further subject to the following:
 1. The standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time; and
 2. Such other terms and conditions as may be prescribed by the Chairperson

to best serve the interests of the State.

3. Authorize the termination of Revocable Permit No. S-7444.
4. Authorize the issuance of a revocable permit to Department of Transportation, Highways Division covering the subject area for field office, staging and work area purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - a. The standard terms and conditions of the most current revocable permit form, as may be amended from time to time;
 - b. Review and approval by the Department of the Attorney General; and
 - c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.


Respectfully Submitted,


Tommy Oi
Kauai District Land Agent

APPROVED FOR SUBMITTAL:



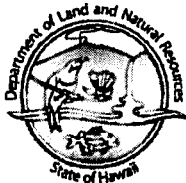
Laura H. Thielen, Chairperson


Land Board Meeting October 23, 2009: D-1 - DEFERRED

The Board deferred this matter until such time that the Applicant is able to provide the information requested by the various testifiers and recommended that an environmental assessment or environmental impact statement be prepare for the affected parcels if any of those parcels were not included in the original EIS prepared for the road widening project.



LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

August 24, 2009

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
FIRST DEPUTY

KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAIKOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

MEMORANDUM:

TO: Brennon T. Morioka, Director
Department of Transportation

FROM: Laura H. Thielen, Chairperson

A handwritten signature in black ink, appearing to be "LH Thielen", is written over the name in the "FROM" field.

SUBJECT: One-Year Agreement for the 50-foot Wide Slope Adjacent to Kuamo'o Road,
Kaumuali'i Section, Wailua River State Park, Kaua'i TMK: (4) 4-1-04: 24

The Department of Land and Natural Resources, Division of State Parks has agreed to improvements along Kuamo'o Road by the Department of Transportation (DOT) that will affect a portion of the Kaumuali'i Section of Wailua River State Park. The DOT proposes to construct a storage lane within the right-of-way (ROW) of Kuamo'o Road and the portion of the park adjacent to the ROW will be used to construct a sloped bank adjacent to the paved storage lane (Attachments 1 and 2).

Wailua River State Park is a 6(f) protected property under the Land and Water Conservation Fund (LWCF) Program. The LWCF federal funds for outdoor recreation were used to construct various improvements within Wailua River State Park in the 1970s. The terms of the program require that 6(f) park lands be retained in outdoor recreation and the construction of a new roadway slope adjacent to Kuamo'o Road and within the park was reviewed by State Parks and the National Park Service for compliance with the LWCF requirements. An easement to DOT was considered but the National Park Service determined that this "taking" of parkland for roadway purposes would result in a conversion where DOT would need to provide alternative park land. Therefore, it has been agreed between our agencies that a gradual, 50-foot wide sloping bank will be constructed from the paved road surface to the lower park grounds. To construct this slope, 16 coconut trees will be removed within the historic coconut grove. It has been determined that several of these trees are nearing 100 years of age and need to be replaced for public health and safety reasons. As part of this project, DOT has agreed to replace the coconut trees and repave the entry road to the park adjacent to Kuamo'o Road.

To address the alteration of the ground surface and landscaping in the park for the improvements to Kuamo'o Road, we are requesting that DOT commit to the monitoring and maintenance of the 50-foot wide slope for a period of one year. This timeframe will allow us to evaluate any structural deficiencies in the construction of the slope. DOT will monitor the viability of the replacement coconut trees for a 9-month period. More specifically, this agreement between DLNR and DOT requires that DOT commit to the following:

EXHIBIT "C"

Mr. Brennon Morioka

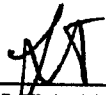
August 24, 2009

Page 2

1. For a period of one year from the completion of construction, DOT will repair any damage and correct any deficiencies within the 50-foot wide slope, as well as the adjacent park grounds, that may be caused by the settling or erosion of the constructed slope, run-off from the roadway and culvert, or any other structural deficiency.
2. For a period of 9 months from the time of planting, DOT will maintain the 16 replacement coconut trees planted in the 50-foot wide slope and insure that the trees are healthy and viable.
3. For a period of 9 months from the time of planting, DOT will replace any of the 16 coconut trees that show signs of disease, decay, or other problems that threaten their health and viability.
4. For a period of 9 months from the time of planting, DOT will maintain the grass lawn within the 50-foot wide slope to insure that the grass is established and there are no threats of soil erosion.

As required with the transfer of a 0.859-acre area at the Hikinaakala Section of Wailua River State Park to DOT for the expansion of the canehaul bridge and construction of the pedestrian/bike path, DOT will become a co-sponsor on the LWCF project agreements for Wailua River State Park. As a co-sponsor, DOT agrees that the 50-foot wide slope area of Kaumuali'i Section of Wailua River State Park will be retained as a viable park site for outdoor recreation.

By our signatures below, we commit on behalf of our respective agencies to the actions stated above and will comply with all the terms and requirements of the LWCF Program as they apply to the Kaumuali'i Section of Wailua River State Park.



LAURA H. THIELEN, Chairperson
Department of Land and Natural Resources

Date

8/25/09

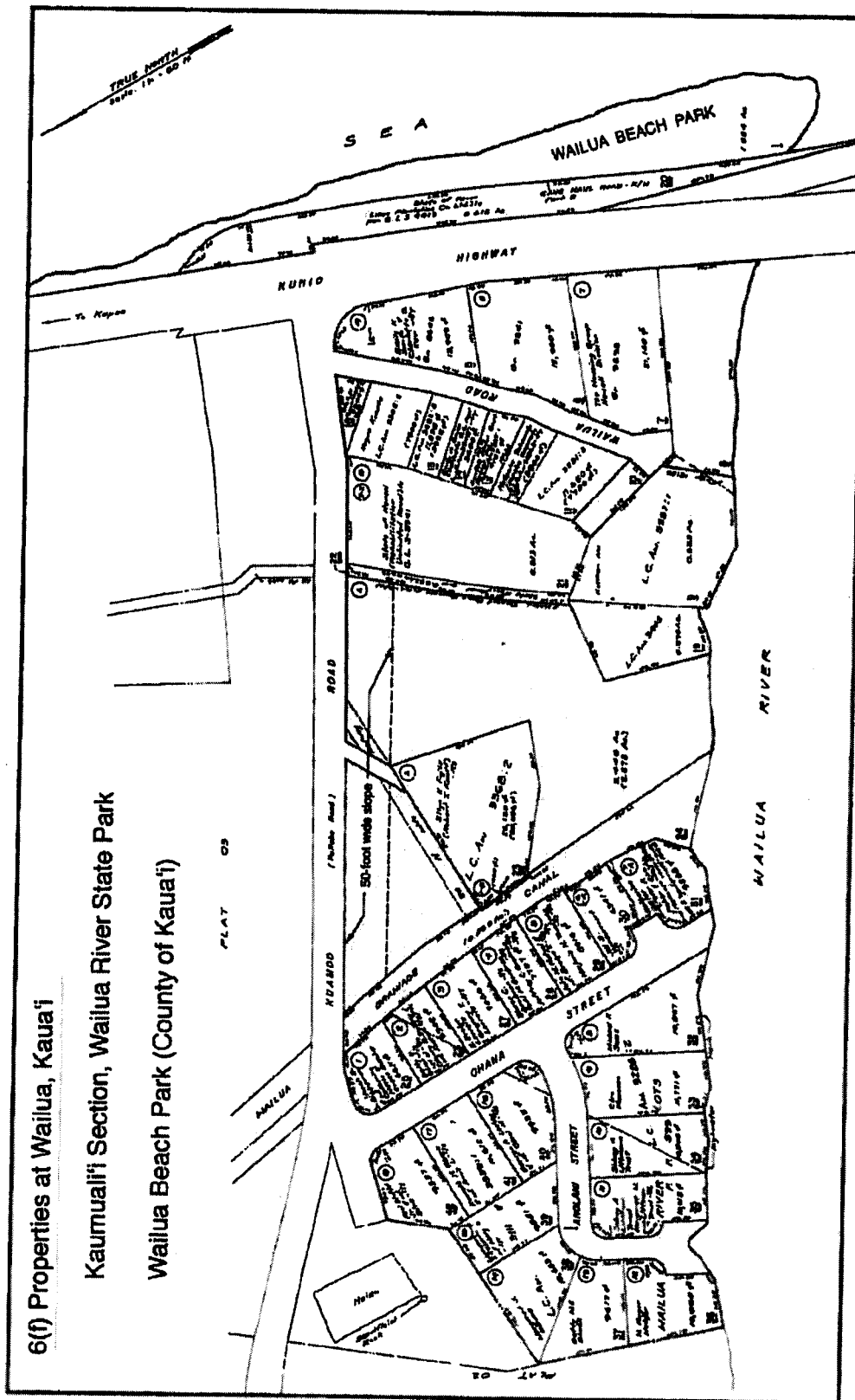


BRENNON MORIOKA, Director
Department of Transportation

Date

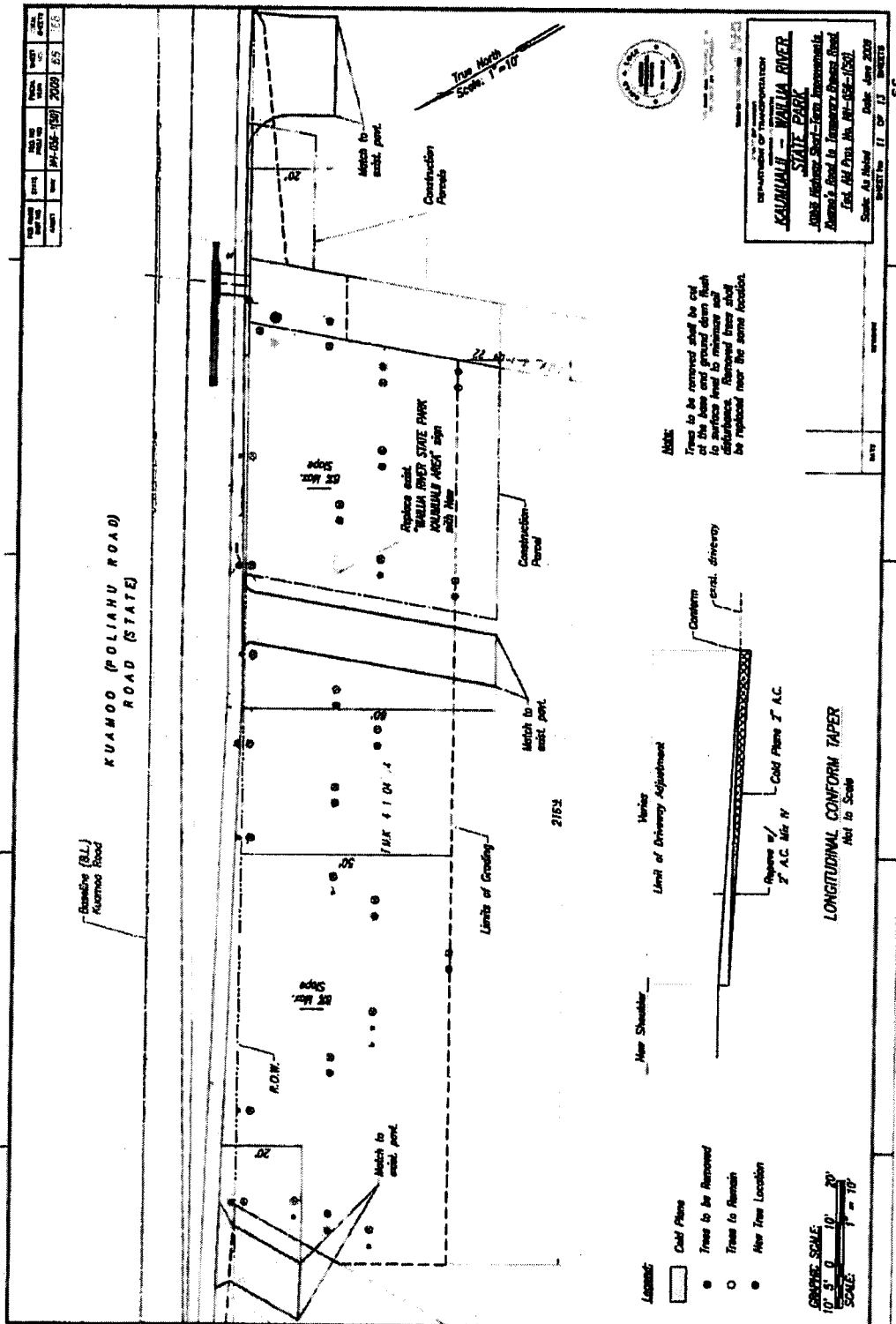
9-23-09

EXHIBIT "C"



ATTACHMENT 1

EXHIBIT "C"



PHONE (808) 594-1888

FAX (808) 594-1885



**STATE OF HAWAII
OFFICE OF HAWAIIAN AFFAIRS
711 KAPI'OLANI BOULEVARD, SUITE 600
HONOLULU, HAWAII 96813**

HRD07/3254

November 30, 2007

Tommy Oi, Land Agent
Department of Land and Natural Resources
3060 Eiiwa Street, Room 205A
Lihu'e, Kaua'i, Hawaii 96766

**RE: Request for Issuance of Slope Easement to State of Hawai'i and
Construction Right-of-Entry Permit, Wailua, Kaua'i, TMKs: 4-1-004:
21, 22 and 24.**

Dear Mr. Oi,

The Office of Hawaiian Affairs (OHA) is in receipt of your request for written comments regarding a request for issuance of a slope easement to the State and a construction right-of-entry permit in Wailua on Kaua'i. We have the following comments:

OHA understands that the applicant intends to install a grassed slope to transition grades from the improved road to existing elevations within the park. As such, OHA comments that this creates the possibility of increased runoff and in different patterns than have previously occurred. This can create additional impacts. OHA inquires as to whether this issue has been addressed or planed for in such ways as filtered drains or spillways to channel the flow in a drainage plan.

OHA sees that this project is quite near the shore and as such would have an effect on the nearshore environment. Without seeing the project plans and list of required permits for this project, OHA generally comments that any project and its potential impacts to State waters must meet the following criteria:

EXHIBIT "D"

Tommy Oi, Land Agent
Department of Land and Natural Resources
November 30, 2007
Page 2

-Anti-degradation policy (Hawai'i Administrative Rules, Section 11-54-1.1), which requires that the existing uses and the level of water quality necessary to protect the existing uses of the receiving State water be maintained and protected.

increased runoff

- Designated uses (HAR, Section 11-54-3), as determined by the classification of the receiving State waters.

- Water quality criteria (HAR, Sections 11-54-4 through 11-54-8).

water quality

OHA also notes that the lands which are impacted by this proposed project became a part of the public land trust under section 5(b) of the Admissions Act. As such, they are ceded lands and we request that they be treated with the respect due to them, as they are part of the 1.8 million acres of land that belong to the Hawaiian monarchy and were transferred to the state when Hawai'i became a U.S. state. In addition, OHA urges that future documents refer to this parcel as ceded lands so that their special status is known to others and to facilitate their continued registry and the creation and maintenance of an accurate ceded lands inventory.

public land trust

OHA comments that the applicant intends to remove five trees and replace four of them from within the park. OHA urges that the applicant not simply replace the taken trees with others nearby, thus reducing the total biomass and aesthetic qualities within the park. The applicant should replace the trees with like trees from a nursery or farm. If we allowed all applicants to exhibit such behavior for all projects, the cumulative impacts would soon create a poignant effect for all of us. This is particularly true in this instance as the project occurs within a park and occurs on ceded lands.

(4) replant 9 trees

The applicant proposes to temporarily use both ceded and park lands to "facilitate construction staging of materials and equipment, and construction activities, such as earthwork, dewatering, water quality monitoring, demolition and installation of the culvert extension." (See page 3 of application form.) Page four of the application form states that the "Contractor will restore to pre-construction condition." OHA looks forward to seeing this statement come to full fruition and encourages the applicant to not only be diligent in this regard, but to take additional steps in the restoration of this area. OHA feels that this would not be costly and would possibly inspire others to do the same.

EXHIBIT "D"

Tommy Oi, Land Agent
Department of Land and Natural Resources
November 30, 2007
Page 3

Generally, OHA would also like to suggest that the project areas be landscaped with native or indigenous species. Any invasive species should also be removed. Doing so would not only serve as practical water-saving landscaping practices, but also serve to further the traditional Hawaiian concept of mālama 'āina and create a more Hawaiian sense of place. This is particularly true for the removed trees on the proposed slope easement but also true for the proposed temporary use of TMK: 4-1-004: 22.

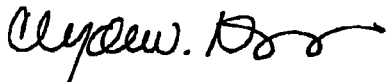
(5) landscaping

(6) cultural site

OHA notes that there are cultural sites in the area and as such we request assurance from the applicant that if iwi kūpuna or other cultural deposits are uncovered, work will stop and the applicant will contact the State Historic Preservation Division immediately.

If you have any further questions or concerns please contact Grant Arnold at (808) 594-0263 or granta@oha.org.

Sincerely,



Clyde W. Nāmu'o
Administrator

C: Kanani Kagawa, Community Resources Coordinator
Office of Hawaiian Affairs, Kaua'i Office
3-3100 Kuhio Hwy. Suite C4
Lihue, Hawai'i 96766-1153

EXHIBIT "D"

LINDA LINGLE
GOVERNOR

HIGHWAY DESIGN BRANCH, ROOM 688A
BRIDGE DESIGN SECTION, ROOM 611
CADASTRAL DESIGN SECTION, ROOM 600
HIGHWAY DESIGN SECTION, ROOM 609
HYDRAULIC DESIGN SECTION, ROOM 636
TECHNICAL DESIGN SERVICE, 688

RIGHT-OF-WAY BRANCH, ROOM 601

TRAFFIC BRANCH, ROOM 602

MOTOR VEHICLE SAFETY OFFICE, ROOM 611



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HIGHWAYS DIVISION AT KAPOLEI

601 KAMOKILA BOULEVARD
KAPOLEI, HAWAII 96707

BRENNON T. MORIOKA
INTERIM DIRECTOR

Deputy Directors
MICHAEL D. FORMBY
FRANCIS PAUL KEENO
BRIAN H. SEKIGUCHI

IN REPLY REFER TO:

JAN 30 2008

HWY-RL
3.85570

TO: MR. THOMAS OI, KAUAI DISTRICT LAND AGENT
DEPARTMENT OF LAND AND NATURAL RESOURCES

FROM: ANGIE NAITO, RIGHT-OF-WAY AGENT *Angie Naito*
HIGHWAYS DIVISION
DEPARTMENT OF TRANSPORTATION

SUBJECT: KUHIO HIGHWAY SHORT TERM IMPROVEMENTS
KUAMOO ROAD TO TEMPORARY BYPASS ROAD
PROJECT NO. NH-056-1(50), (PROJECT)
OFFICE OF HAWAIIAN AFFAIRS' COMMENTS FOR THE SLOPE
EASEMENT AND RIGHT-OF-ENTRY PERMIT, WAILUA, KAUAI,
TMK: (4) 4-1-04-21, 22 AND 24

In response to your facsimile transmittal dated December 27, 2007, requesting resolution for comments imposed by the State of Hawaii, Office of Hawaiian Affairs' (OHA) letter HRD07/3254 dated November 30, 2007, the following are offered as our responses:

1. Increased runoff: The State Department of Transportation's (DOT) consultant, Wilson Okamoto Corporation verified that any increase in runoff due to the Project improvements near the proposed slope easement is negligible.
2. Water Quality: The Project is complying with the State Department of Health, water quality rules and regulations through various permits such as NPDES and 401 Water Quality Certification.
3. Public Land Trust: We have noted these comments and will apply to future project documentation.
4. Relocated Trees: We have noted these comments; our original design intent would be to replace trees with new nursery cultivated landscaping.

EXHIBIT "E"

JAN 30 2008

5. Landscaping: The contractor will replace landscaping that the contractor damages/removes during construction of the Project. The contractor will be told not to plant any invasive species in the Project area.
6. Cultural Sites: We have consulted with the State, Department of Land and Natural Resources, Historic Preservation Division (SHPD) during the plan review and permitting process. The plans and specifications require the contractor to stop work and contact SHPD should archaeological/cultural deposits be uncovered.

We hope this satisfies OHA's concerns. Thank you for your continued cooperation on this Project. If there are any questions, please call me at (808) 692-7333.

EXHIBIT "B"

Department of Transportations
Response

LINDA LINGLE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

BRENNON T. MORIOKA
DIRECTOR

Deputy Directors
MICHAEL D. FORMBY
FRANCIS PAUL KEENO
BRIAN H. SEKIGUCHI
JIRO A. SUMADA

IN REPLY REFER TO:

HWY-PA
2.4289

TO: THE HONORABLE LAURA H. THIELEN, CHAIRPERSON
DEPARTMENT OF LAND AND NATURAL RESOURCES

FROM: BRENNON T. MORIOKA, Ph.D., P.E.
DIRECTOR OF TRANSPORTATION

SUBJECT: RE-SUBMITTAL:

- (1) GRANT OF PERPETUAL, NON-EXCLUSIVE EASEMENT TO KAUAI ISLAND UTILITY COOPERATIVE AND HAWAIIAN TELCOM INC. FOR UTILITY PURPOSES COVERING TAX MAP KEYS: (4) 4-1-3:PORTION 44 AND 17;
- (2) ISSUANCE OF A RIGHT-OF-ENTRY TO THE DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION FOR CONSTRUCTION, STAGING AND WORK AREA PURPOSES COVERING TAX MAP KEYS: (4) 4-1-3:44, 17 AND 4-1-4: PORTION 21, 22, 24;
- (3) CANCELLATION OF REVOCABLE PERMIT NO. S-7444 COVERING TAX MAP KEY: (4) 4-1-3:17; AND
- (4) ISSUANCE OF A REVOCABLE PERMIT TO THE DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION FOR FIELD OFFICE, STAGING AND WORK AREA PURPOSES COVERING TAX MAP KEY: (4) 4-1-3:17, LOCATED AT KAWAIHAU, KAUAI.

Please accept my sincerest apologies for not being present at the Land Board's October 23, 2009 meeting (Agenda item D-1) to answer any questions the Board Members may have had concerning our request.

Briefly, we enclose our response to several questions raised:

1. **Parcels requested for easements and temporary use as construction parcels were addressed in the project's Final Environmental Assessment (Final EA).**

The subject parcels identified as Tax Map Key (TMK) 4-01-03: and portions of 17 and 44, and 4-01-04: portions of 21, 22, and 24 were identified and addressed in the *Final Environmental Assessment for Kuhio Highway Short-Term Improvements: Kuamoo Road to Temporary Bypass Project, September 2009*. Table 2-1 (page 2-15) identified parcels TMK 4-01-03: 17 and 44 for use with the highway widening and utility easements, and were also discussed in Section 2.3 of the Final EA.

Parcels identified as TMK 4-01-04: 21 and 22 were identified on page 2-18 in Section 2.3 of the Final EA as lands for use by the contractor during construction activities. These parcels were discussed under the subheading of ceded lands.

TMK parcel 4-01-04: 24 was identified on page 2-47 in Section 2.5.9 of the Final EA. An existing driveway on this parcel was stated as needing to be adjusted as part of accessory improvements to the Kuamo'o Road storage lane extension. These parcels associated with TMK 4-01-04 were also identified on the roadway plans included in the Final EA. Figure 2-11 (page 2-35) shows the proposed use of parcels 21 and 24 for construction parcels, and parcel 22 for a culvert extension.

Clarification of Proposed Use of Parcels

The following information is provided to identify proposed use and activities to be conducted on the subject parcels to better clarify potential project impacts on historic sites and traditional and cultural practices.

- a. TMK 4-01-03: 17. A parcel used as a driveway entrance to the Coco Palms Resort property and vehicular parking area. The portion of the property where the driveway is will be used for constructing electrical lines underground and serve as an electrical switch box for KIUC. Figure 1 of Exhibit 1 graphically shows this.
- b. TMK 4-01-03: 44. An irregular-shaped parcel comprised of a strip portion that was formerly used as a cane haul road and railroad right-of-way, and a triangular-shaped portion used by the County as a wastewater pump station site. Relocated electrical lines would be located within the strip portion adjacent to an existing sewer line along with the triangular-shaped portion. An electrical switch box would be located within the triangular portion of the parcel. Figure 2 of Exhibit 1 graphically shows this.
- c. TMK 4-01-04: 21. A parcel used for existing commercial related uses. A portion of the site will be used as a construction parcel for the contractor to store equipment and materials. No grading or subsurface trench work required for this construction parcel. Figure 1 of Exhibit 1 graphically shows this area.

- d. TMK 4-01-04: 22. A strip parcel used as an unlined drainageway on the southern side of Kuamo'o Road. This drainageway is normally dry and overgrown with trees and vegetation. Surface drainage from Coco Palms Resort only discharges into this drainageway when water is manually pumped into the Kuamo'o Road culvert because the culvert opening is above the Resort's drainage canal. A portion of this parcel will be used for culvert improvements and as a construction parcel. Figure 1 of Exhibit 1 graphically shows this area.
- e. TMK 4-01-04: 24. A parcel used for the Kaumuali'i Section of the Wailua River State Park. Kuamo'o Road was built on fill material and is thus a few feet higher in elevation than this park site. Based upon consultation and agreement with the Division of State Parks, a portion of this site will be filled to provide gradual transition in elevation from the park site to Kuamo'o Road. Several existing coconut trees within the affected area have already been topped to only about 10 feet in height by the Division of State Parks. DOT will cut the remaining stumps and grind it down to the ground, and plant new ones as part of park maintenance improvements that were already planned by the Division of State Parks for this park site saving that department associated costs. A portion will also be used as a construction parcel. Figure 1 of Exhibit 1 graphically shows this area.

2. State DOT efforts taken to address burials and effects on traditional cultural practices.

The State DOT has conducted the following activities to: 1) identify historic properties and traditional cultural practices that may be affected, 2) assess the project impacts, and 3) identify measures to mitigate such impacts.

Identification of Historic Properties and Cultural Practices

- a. Determined the area of potential effect (APE) which is the geographic area within which the project may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist.
 - The highway improvements and subsurface utility relocation lacks potential to affect historic properties outside the project corridor. As a result, the APE for highway improvements consists of the linear Kuhio Highway and Kuamo'o Road corridor within the State DOT's existing right-of-way.
 - The APE for the subsurface utility installation generally consists of the existing highway right-of-way and easement corridor.

- b. Conducted consultation with various agencies and organizations to help identify additional historic properties and cultural resources that may be within the APE.
 - Presentation to the Kauai/Niihau Islands Burial Council and Kauai Historic Preservation Review Commission to solicit input in March 2009.
 - Meetings with the SHPD and the OHA.
 - A public informational meeting held in March 2009.
 - A Draft Environmental Assessment (Draft EA) was also used to solicit public input under this effort.
- c. Conducted two archaeological inventory surveys by Cultural Surveys Hawaii, Inc.
 - 1) No historic properties were identified. Therefore, inventory surveys became "archaeological assessments" under Chapter 13-13-275, HAR.
 - 2) *Archaeological Assessment for the Kuhio Highway Short-Term Improvements – Kuamoo Road to the Temporary Kapaa Bypass Road* in June 2007 for a 0.492 acre strip parcel (Parcel 039) formerly used as a railroad right-of-way.
 - 3) *Archaeological Assessment for the Kuhio Highway Short-Term Improvements – Kuamoo Road to the Temporary Kapaa Bypass Road* in July 2009 for the highway widening and relocation of overhead utilities.
- d. There are no known traditional cultural practices occurring within the existing State DOT right-of-way for Kūhiō Highway and Kuamo‘o Road.
 - 1) Roadways are used for vehicular traffic.
 - 2) The State-owned strip parcel fronting the Coco Palms Resort is not known to be used for traditional cultural practices since portions of the parcel is overgrown with vegetation and is situated along a busy highway.
- e. There are some traditional cultural practices, mainly recreational oriented, occurring in the general area based upon community input.
 - 1) Wailua Beach Park is used by fishermen (shoreline and boat), surfers, canoe traditions, and family gatherings.
 - 2) Cultural practices occur within Wailua River, the Wailua River Valley, and within the State park. Such activities include paddling in the river,

boating, crabbing, and other cultural activities such as wood carving, and hula. Other cultural practices involve spiritual and religious worship and enjoying the peace and beauty of the river valley and Wailua Complex of Heiau.

- 3) Community input also indicated that the Wailua area is viewed as having a historical, cultural, and spiritual value.

Effects on Historic Sites and Cultural Practices

- a. No historic properties were identified within the State strip parcel (Parcel 039) formerly used as a railroad right-of-way.
 - A July 18, 2007 letter from SHPD approved the archaeological report and issued a “no adverse effect” on historic properties determination. Exhibit 2 includes a copy of this and other letters.
- b. No historic properties would be affected for the Kuamoo Road storage lane improvements.
 - A September 21, 2007 letter from SHPD issued a “no historic properties will be affected” determination.
- c. No historic properties were identified within project corridor (highway and utilities relocation).
 - An August 18, 2009 letter from SHPD approved the July 2009 archaeological assessment report that recommended a “no adverse effect” determination.
- d. Other historic sites are in the project’s surrounding area. However, these sites identified below are outside of the APE and would not be affected by the project improvements.
 - Wailua Complex of Heiau.
 - Mahunapuuone Burial Ground (SIHP Site 50-30-08-681) is a reinterment site within the Coco Palms Hotel property.
- e. This project is not expected to significantly affect traditional cultural practices occurring within the linear project corridor or in the immediate vicinity adjacent to the proposed improvements.

- 1) Improvements would not occur on Wailua Beach Park, adversely impact activities occurring which are mainly recreational, or prevent access to this beach park.
- 2) Improvements would not occur within Wailua River or the State Park preventing or adversely affecting cultural or recreational activities and access to this park.
- 3) Improvements would not significantly change the cultural or historical landscape of Wailua because it would occur within the existing State DOT right-of-way.
- 4) The relocation of existing overhead utilities underground would not significantly change the cultural or historical landscape of Wailua. Removal of overhead lines and associated utility poles would actually provide a visual improvement to the area enhancing the natural beauty of the area.
- 5) The Wailua area has already been altered over time with urbanization and changes consisting of residences, businesses, and recreational facilities. The State DOT has a responsibility to provide a safe, efficient, and accessible highway system for the public, and thus public improvements such as this project are intended to meet these responsibilities.

Additional Conditions and Measures to be Implemented

There is the potential for subsurface sites being encountered during construction activities and the general project area is culturally sensitive based upon comments received. Therefore, additional conditions and mitigative measures are planned to be implemented by the State DOT to further implement precautionary actions to minimize potential project effects on possible subsurface sites (burials) that may be encountered during construction. These conditions were developed in consultation with OHA and approved by SHPD.

A letter dated October 13, 2009 from the FHWA to SHPD documents the additional conditions being implemented by DOT. An October 22, 2009 letter from SHPD responding to FHWA concurs with the no adverse effect determination. These letters are included in Exhibit 2. The additional conditions are as follows:

- a. Additional subsurface testing would be conducted within the project corridor.

- 1) Testing would occur during the construction phase of the project and include.
 - a) Additional work on State-owned strip parcel (TMK 4-1-03: 039) situated between the Coco Palms Resort and Kuhio Highway.
 - b) A section along the mauka side of the highway from the intersection of the Temporary Kapaa Bypass Road northbound to a proposed electrical riser pole near Aleka Loop.
 - c) Along undeveloped areas of the mauka side of the highway where underground utilities are planned within a privately-owned parcel identified as TMK 4-3-10: 001 located north of Haleilio Road.
- b. Construction of the project will proceed under an archaeological monitoring program.
- c. Develop a plan addressing burial treatment protocols in the event burials are encountered.
 - 1) Procedures for “previously identified” and “inadvertent discovery” burials would be addressed.
 - The intent is to identify procedures so that burials are properly protected and cared for while formal decisions regarding treatment is developed.
 - 2) The plan would be developed in consultation with OHA, SHPD, the Kauai/Niihau Islands Burial Council, and pertinent Native Hawaiian organizations.
 - 3) The protocols plan would be submitted to OHA, SHPD, and the island burial council for concurrent review.
- d. A cultural monitor will be allowed to serve as a liaison between the contractor and concerned community to provide increased level of communication.
 - 1) OHA will develop a framework for their selection and management of a cultural monitor.

- 2) The monitor will either be on-site or on-call for monitoring subsurface construction work (ex. trench digging).
- 3) The State DOT will reimburse OHA for compensation for this cultural monitor.

3. Project improvements will not impact the drainage ditch connecting to the historic fish pond within the Coco Palms Resort.

A culvert within Kuamoo Road will be extended on the southern side to support the storage lane improvements. North of the culvert, the Coco Palms Resort lagoons are connected to a small channel which lead to the culvert in Kuamo'o Road. The south end of the culvert opens to an open drainage ditch that is overgrown with vegetation. The Coco Palms Resort's lagoon is a man-made body of water that is replenished through rainfall, surface runoff, and from groundwater seepage into the lagoon.

However, water does not naturally flow southbound into the culvert from the lagoon's channel because the culvert opening is elevated about two feet above the surface water in the channel. A sluice gate, now broken, is present at the culvert opening to control water from the channel. The resort has a currently inoperable pump system situated near this culvert to pump water from the channel into the culvert during periods of heavy rainfall to prevent flooding of the resort property.

The culvert extension is not expected to have a significant impact on existing waterways serving this culvert. The culvert extension for the storage lane extension would occur on the southern side of the roadway where there is only a drainage ditch overgrown with vegetation. This ditch does not have water present, and conditions indicated that water flow has not occurred for some time. As a result, the culvert extension on the southern end should not significantly impact the historic man-made lagoon within the Coco Palms Resort.

4. Project improvements and State parcels affected by Board request will not adversely impact the Wailua Complex of Heiau.

The Wailua Complex of Heiau is comprised of five discontinuous properties under jurisdiction of the State of Hawaii. Most of the heiau and sites in the complex are associated with legends, rulers, and events that played an important role in Hawaiian culture and are of traditional significance to contemporary Hawaiians of native descent.

The project's highway widening improvements would not occur in the vicinity nor alter or significantly impact the characteristics or features of the five sites making up the Wailua Complex of Heiau. Utilities relocation would place existing overhead lines

underground and not affect the sites making up this complex. Therefore, the State parcels subject to the Board's action for easement and construction parcels would not adversely impact this complex. Further discussion is provided below.

- a. Kalaeokamanu (Holoholoku) Heiau, the Pohaku Hoohanau (royal birthstone), and Pohaku Piko (ceremonial niche) (SIHP Site 50-30-08-106) are located on the north bank of Wailua River. The Holoholoku Heiau and the Pohaku Hoohanau are located about 710 feet away from the most western (mauka) end of the Kuamoo Road improvements. The Holoholoku Heiau functioned as a luakini temple for human sacrifices. The Pohaku Hoohanau served as a rock shelter for high chieftess to give birth. These sites are a considerable distance away from the improvements occurring within the State DOT's right-of-way. Improvements would not affect access to these sites, or the structures present, their historic function, or architectural features making them significant.
- b. Poliahu Heiau (SIHP Site 50-30-80-170) is located on a bluff above the Wailua River. The Poliahu Heiau is located further inland than the Holoholoku Heiau and would similarly not be affected by the improvements along Kuamoo Road.

This heiau probably functioned as a luakini temple and commands a panoramic view of the Malae Heiau which it is associated with. The improvements would not affect access to this site, or the structures present, their historic function, or architectural features making them significant. There are no highway or utility improvements that would block or negatively impact the view from the Poliahu Heiau to Malae Heiau. The removal of existing overhead utility lines and associated poles along the project corridor would actually improve this view between these heiau.

- c. Wailua Bellstone (SIHP 50-30-80-335) are located makai of Poliahu Heiau on the same bluff above the Wailua River. The bellstone is a basalt boulder on a bluff overlooking the Wailua River which was drummed with cobbles to produce a hollow sound notifying the approach of chiefly or religious processions. The improvements would not affect access to this site, or the structures present, their historic function, or architectural features making them significant.
- d. Malae Heiau (SIHP Site 50-30-08-104) is located at the river mouth on the south side Wailua River. Malae Heiau and Poliahu Heiau were two large companion heiau. The Malae Heiau is situated inland (mauka) of the existing Kuhio Highway corridor and no highway improvements are planned fronting this heiau area. The relocation of existing overhead utilities underground and removal of

associated poles in the area of the Malae Heiau would occur on the makai side of the highway and thus not affect access or the features of that heiau.

- e. Hikinaakala Heiau, Puuhonua o Hauola (place of refuge), and a series of petroglyphs on eight boulders that are visible at low tide (SIHP Site 50-30-08-105) are located south of the Wailua River mouth, makai of Kuhio Highway. These sites would not be affected because they are situated along the shoreline over 600 feet away from the highway and are separated by a resort development. There are no highway improvements planned along Kuhio Highway in the vicinity of these sites. Only the relocation of existing overhead lines underground and removal of associated poles along the highway would occur.

5. Project improvements will not adversely impact the Mahunapuuone Burial Ground and other sites within the Coco Palms Resort.

The Mahunapuuone Burial Ground (SIHP Site 50-30-08-681) is a reinterment site on the Coco Palms Hotel property where over 85 sets of remains were encountered and reinterred at the front of the hotel with a plaque attached on a boulder on the spot to mark the reinterment. In addition, there are three additional SIHP sites on the Coco Palms Resort property: 50-80-08-660, historic burial; -680, two fishponds; and -1711 an intermittent cultural layer. SIHP Sites 50-30-08-660 and 50-30-08-680 are also located approximately 330 feet and 250 feet away Kuhio Highway, respectively. The intermittent cultural layer (Site -1711) is located further inland (mauka) behind the resort buildings well away from the highway.

The proposed highway improvements and relocation of utility lines are not expected to impact the Coco Palms Resort property because improvements would not occur within this property. The Mahunapuuone Burial Ground should similarly not be affected by improvements because it would not occur within the resort property. Similarly, the other sites on the grounds of Coco Palms are considerable distances away from Kuhio Highway and would not be affected.

DOT has agreed to implement additional measures beyond what is currently required for this project in efforts to address concerns with potential burial sites and due to the cultural sensitivity associated with the Wailua area.

DOT respectfully requests Land Board approval of our request. This highway project is very important to DOT and the travelling public on Kauai because it will address the significant congestion already occurring within the Kuhio Highway corridor, benefiting both residents and visitors alike.

Exhibit 1

Figures Showing Subject Parcels

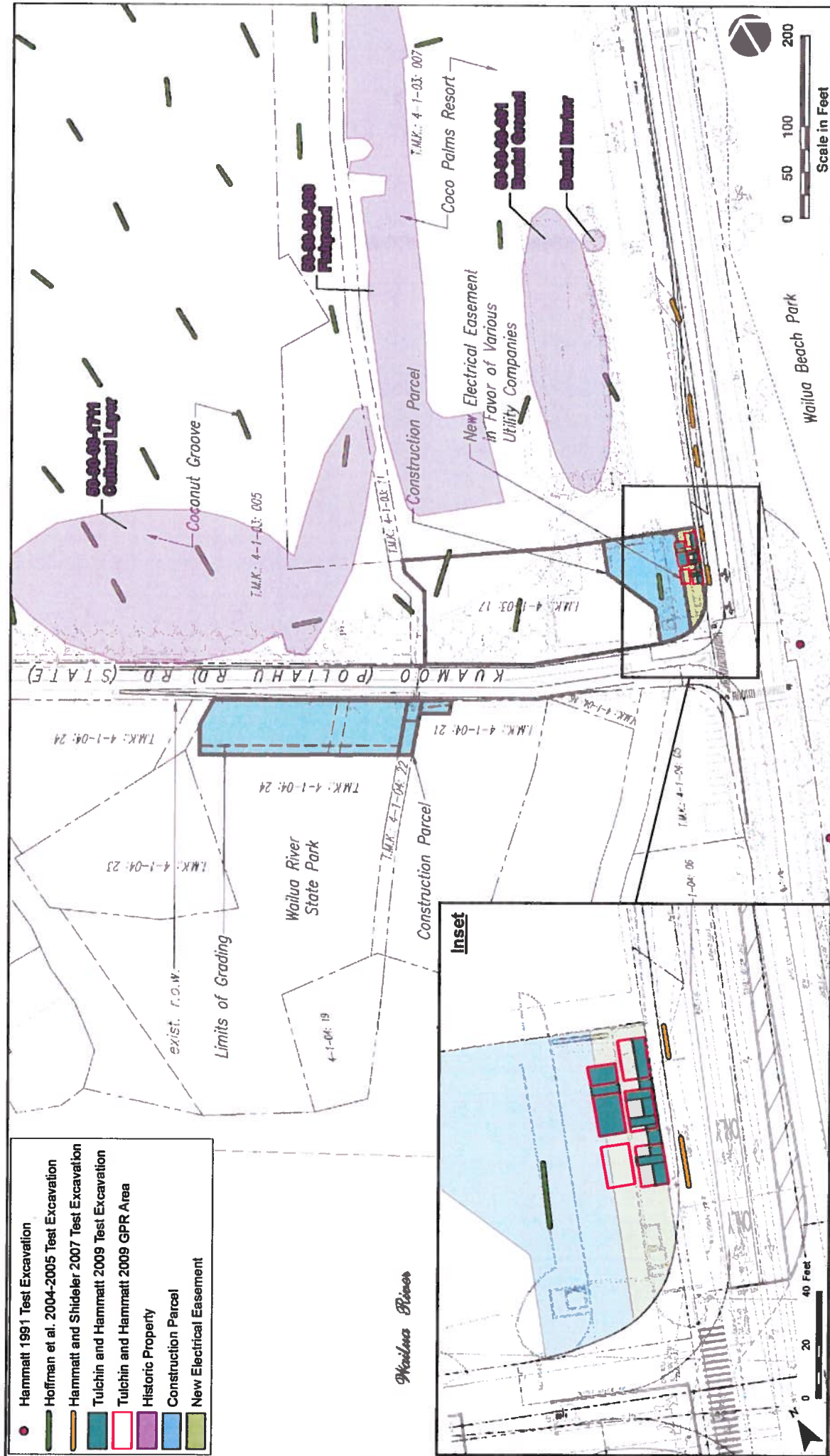


FIGURE
1

CONSTRUCTION PARCELS AND ELECTRICAL EASEMENT FOR
TMK 4-1-04:021, 022 & 024 AND 4-1-03-017



**WILSON OKAMOTO
CORPORATION**
ENGINEERS • PLANNERS

Exhibit 2

**Letters Documenting Agency Review and Consultations
Regarding Historic Properties**

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

STATE HISTORIC PRESERVATION DIVISION
601 KAMOKILA BOULEVARD, ROOM 555
KAPOLEI, HAWAII 96707

ALLAN A. SMITH
INTERIM CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
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HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

July 18, 2007

Hallett Hammatt, Ph.D.
Cultural Surveys Hawai'i
Post Office Box 1114
Kailua, Hawai'i 96734

LOG: 2007.2362
DOC: 0707NM23
Archaeology

Dear Dr. Hammatt:

Subject: Chapter 6E-42 - Historic Preservation Review – Archaeological Assessment for Kuhio Highway Short-Term Improvements – Kuamo'o Road to the Temporary Kapaa ByPass Road Wailua Ahupua'a Puna District Koloa, Kauai (CSH, Hammatt and Shideler June 2007)
TMK: [4] 4-1-003: 039 por.

Thank you for submitting the aforementioned archaeological assessment by CSH, Hammatt and Shideler (2007). Ten backhoes trenches were dug along Kuhio Highway. In trench 9, a remnant of a cultural layer identified as site 50-30-08-1711 (Buffum and Dega 2002) was found. No other historic properties or burials were found. We concur with your recommendation of archaeological monitoring during the construction of the widening of Kuhio highway. Mitigation for inadvertent discoveries would be covered by archaeological monitoring. Therefore we recommend the following conditions be attached to this permit for a "no adverse effect" on historic properties:

An archaeological monitoring plan shall be submitted to the State Historic Preservation Division for review and approval. Archaeological monitoring shall take place during all subsurface construction work due to the high probability of finding human burials. A draft monitoring report shall be submitted 90 days after the completion of fieldwork for review and approval to the State Historic Preservation Division.

The assessment report is acceptable. If you have any questions, please call Nancy McMahon, the Kauai and Molokai Archaeologist who reviewed this plan at 808.742.7033.

Sincerely,

Melanie A. Chinen, Administrator
State Historic Preservation Division

NM:

c: DLNR –Kauai Land Division
DOT – Highways Division
County - Public Works and Planning Departments
KHPRC

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

STATE HISTORIC PRESERVATION DIVISION
601 KAMOKILA BOULEVARD, ROOM 555
KAPOLEI, HAWAII 96707

LAURA H. THIELEN
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KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

September 21, 2007

Ron Sato, Senior Planner
Wilson Okamoto Corp
1907 South Beretania Street, Suite 400.
Honolulu, Hawaii 96826

RECEIVED
SEP 24 2007
WILSON OKAMOTO CORPORATION

LOG NO: 2007.2770
DOC NO: 0709NM12
Archaeology

Dear Mr. Sato:

**SUBJECT: Chapter 6E-42 - Historic Preservation Review – Pre- Assessment Consultation for
Kuhio Highway Short Term Improvements Kuamoo Road to Temporary By-Pass
Road FAP No. NH-056-I(50)
Wailua, Kawaihau District, Island of Hawai'i
TMK: (4) 4 various**

The aforementioned permit is for Kuamoo Road improvements to the existing right –turn storage lane.

We believe that “no historic properties will be affected,” because:

- ☒ Intensive cultivation has altered the land
- ☒ Residential development/urbanization has altered the land
- ☒ Previous grubbing/grading has altered the land
- ☐ An accepted archaeological inventory survey (AIS) found no historic properties
- ☐ SHPD previously reviewed this project and mitigation has been completed
- ☐ Other:

In the event that historic resources, including human skeletal remains, are identified during routine construction activities, all work needs to cease in the immediate vicinity of the find, the find needs to be protected from additional disturbance, and the State Historic Preservation Division, Kauai Section, needs to be contacted immediately at (808) 742-7033.

Aloha,

Melanie Chinen, Administrator
State Historic Preservation Division

NM:jen

LINDA LINGLE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

STATE HISTORIC PRESERVATION DIVISION
601 KAMOKILA BOULEVARD, ROOM 555
KAPOLEI, HAWAII 96707

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUII
FIRST DEPUTY

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August 18, 2009

Mr. David Shideler
Cultural Surveys Hawai'i
P. O. Box 1114
Kailua, Hawai'i 96734

LOG NO: 2009.3416
DOC NO: 0908NM24
Archaeology

Dear Mr. Shideler:

**SUBJECT: 6E-8 Historic Preservation Review--
Archaeological Assessment (AA)--
For the State DOT Kuhio Hwy Short-Term Improvements Project
Wailua Ahupua'a, Lihue, Kaua'i Island, Hawai'i
TMK: (4) 3-9-006: 026**

Thank you for the opportunity to review this DRAFT AA (*Archaeological Assessment for the State DOT Kuhio Hwy Short-Term Improvements Project, Wailua Ahupua'a, Lihue District, Kaua'i Island, Hawai'i* TMK: (4)3-9-006: 026: [Tulchun and Hammatt, PhD, CSH, July 2009])

This survey was for 1.7 linear miles along Kuhio Hwy with GPR being conducted in 960 square feet with 5 trenches. No historic properties were found.

This report is accepted and it meets the minimum requirements for compliance with 6E-8 and Hawaii Administrative Rules (HAR) §13-13-276 *Rules Governing Standards for Archaeological Inventory Studies and Reports*.

This Report recommends archaeological monitoring since the area is a high cultural sensitive area. We concur with this recommendation.

As this subject archaeological assessment report has received final acceptance please send one hardcopy of the document, clearly marked FINAL, along with a copy of this review letter and a text-searchable PDF version on CD to the attention of "SHPD Library" at the Kapolei SHPD office.

Please call me at (808) 692-8015 if there are any questions or concerns regarding this letter.

Aloha,

A handwritten signature in cursive script, reading "Nancy A. McMahon".

Nancy A. McMahon (Deputy SHPO),
Archaeology and Historic Preservation Manager



U.S. Department
of Transportation
**Federal Highway
Administration**

Hawaii Federal-Aid Division

October 13, 2009

300 Ala Moana Blvd., Rm 3-306
Box 50206
Honolulu, HI 96850
Phone: (808) 541-2700
Fax: (808) 541-2704
<http://www.fhwa.dot.gov/hidiv>

In Reply Refer To:
HDA-HI

CERTIFIED MAIL RETURN RECEIPT
7002 0860 0007 4381 1308

Ms. Laura Thielen, Chairperson
Department of Land and Natural Resources
State of Hawaii
P.O. Box 621
Honolulu, HI 96809

Dear Ms. Thielen:

**Subject: Kūhiō Highway Short-Term Improvements; Kuamo'o Road to Kapa'a Temporary
Bypass Road Project (FAP No. NH-056-1(50))
Wailua, Island of Kaua'i
Section 106 Consultation**

The State of Hawaii, Department of Transportation (DOT), Highways Division is proposing to implement the Kūhiō Highway Short-Term Improvements Project that is located in Wailua of the Island of Kaua'i. The Federal Highway Administration (FHWA) is proposing to authorize construction of this undertaking.

This letter with attachments is being submitted to document consultation efforts conducted for this undertaking pursuant to Section 106 of the National Historic Preservation Act and the Advisory Council on Historic Preservation's regulations for Protection of Historic Properties (36 CFR, Part 800). We have applied the criteria of effect based upon 36 CFR §800 for the proposed undertaking, and have determined that it will have "no adverse effect" on historic properties.

Based upon consultations efforts and studies conducted, there are no known historic properties within the area of potential effect and no known historic properties that would be negatively affected by the project improvements. However, there is a potential for subsurface sites being encountered during construction activities, and the general project area is culturally sensitive. Therefore, in making our determination, we are proposing to carry out the following actions to avoid adverse effects on potential subsurface sites.



Proposed Measures

1. Additional subsurface testing would be conducted within the project corridor. Any burials found during this process will be treated as a known burial.
 - a. Testing would occur during the construction phase of the project and include the following areas:
 - 1) A State-owned strip parcel (TMK 4-1-03: 039) situated between the Coco Palms Resort and Kūhiō Highway.
 - 2) A section along the mauka side of the highway from the intersection of the Temporary Kapa'a Bypass Road northbound to a proposed electrical riser pole near Aleka Loop.
 - 3) Along undeveloped areas of the mauka side of the highway where underground utilities are planned within a privately-owned parcel identified as TMK 4-3-10: 001 located north of Haleilio Road.
 - b. A plan covering the additional testing scope of work will be prepared and submitted to the State Historic Preservation Division (SHPD) for review and approval.
 - c. A new inventory survey report would be prepared documenting the results of this additional testing.
 - This report will be submitted to SHPD for review and approval.
2. Construction of the project will proceed under an archaeological monitoring program.
 - a. The SHPD approved Archaeological Monitoring Plan (March 2009) for the highway widening improvements (DOC: 0903WT117) will be amended to incorporate on-site monitoring for the relocation of existing overhead utilities underground.
 - b. The amended monitoring plan will be submitted to SHPD for review and approval.
3. Develop a plan addressing burial treatment protocols in the event burials are encountered.
 - a. Procedures for "previously identified" and "inadvertent discovery" burials should be addressed.
 - The intent is to identify procedures to ensure burials are properly protected and cared for while formal decisions regarding treatment are developed.
 - b. The plan would be developed in consultation with the Office of Hawaiian Affairs (OHA), SHPD, the Kaua'i / Ni'ihau Islands Burial Council, and pertinent Native Hawaiian organizations.
 - c. The protocols plan would be submitted to OHA, SHPD, and the island burial council for concurrent review.
 - d. The plan's preparation, review, and revision will be completed within a total timeframe of four (4) months.
 - Written notification to OHA and SHPD would be provided to document initiation of this process and completion date.

4. OHA will develop a framework for their selection and management of a cultural monitor assisting on this project to serve as a liaison between the contractor and concerned community to provide increased level of communication.
 - a. The cultural monitor will be hired by OHA and serve under OHA's management and responsibility.
 - OHA will provide a written job description and framework for this monitor's responsibilities and duties to the State DOT and FHWA.
 - b. The monitor will either be on-site or on-call for monitoring subsurface construction work (ex. trench digging).
 - The cultural monitor should coordinate one's activities with the contractor and archaeologist who are responsible for on-site decisions.
 - The monitor should follow all construction safety procedures and be equipped with personal protective equipment.
 - c. The State DOT will reimburse OHA for compensation associated with this monitor.
 - d. A report documenting the monitor's activities will be submitted from OHA to the State DOT and FHWA.
 - 1) Daily monitoring data logs will be prepared by the monitor.
 - 2) The report should include a qualitative narrative of monitoring activities, data logs, and recommendations that could be applied to future projects.

We request your concurrence with the proposed no adverse effect determination for this project. Enclosed is documentation supporting this determination for your review. This documentation was prepared based upon your department's guidelines for Section 106 submissions.

We would greatly appreciate your response within 30 days of receipt of this letter. If you have any questions, please contact me at 541-2700, ext. 2305 if have any questions regarding this consultation request.

Sincerely yours,



Pat V. Phung, P.E.
Transportation Engineer

Enclosure: Documentation

cc: Darell Young, HDOT, HWY-P
Ronald Sato, Wilson Okamoto Corporation

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

STATE HISTORIC PRESERVATION DIVISION
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KAIHOLAWA ISLAND RESERVE COMMISSION
LAND
STATE PARKS

October 22, 2009

Mr. Pat Phung, P.E.
Transportation Engineer
US DOT- FHWA
300 Ala Moana Blvd, Room 3-306
Honolulu, Hawai'i 96850

LOG NO: 2009.4462
DOC NO: 0910NM34
Archaeology

Dear Mr. Phung:

**SUBJECT: National Historic Preservation Act – Section 106 Review—
Proposed Kūhiō Highway Short Term Improvements – (FAP No NH-056-1(50))
Wailua Ahupua'a, Puna District, Kaua'i
TMK: (4) 4-1-003: 017, 039, 044 and 4-3-002: 006 por.**

Thank you for providing the opportunity to review your documentation on your determination that the Kūhiō Highway Short-Term Improvement Projects have a "no adverse effect" determination. This project is the creation of short-term improvements to the Kūhiō Highway between Kuamo'o Road on the south and the Temporary Kapa'a Bypass Road on the north. We concur that there are no known historic properties within the APE but there is certainly the potential for subsurface sites or human remains. The project area is located in an archaeologically sensitive area fronting the Coco Palms Resort where previous archaeological inventory surveys recorded a widely dispersed buried cultural layer and numerous human burials on the grounds of the resort.

To address the possibilities of finding historic properties or human remains, the FHWA is proposing additional archaeological inventory testing, archaeological monitoring (AMP approved March 2009 DOC:0903WT117), developing a burial treatment plan and hiring a cultural monitor under OHA's directions. Based on the documentation and the stated FHWA proposal, we concur with your determination that this project will have "no adverse effect" on historic properties.

If you have any questions please call me at 692-8015.

Aloha,

A handwritten signature in cursive script that reads "Nancy A. McMahon".

Nancy A. McMahon (Deputy SHPO)
State Historic Preservation Officer

Cc: Doug Haigh, County of Kauai
Ron Sato, Wilson Okamoto Corp.
Darrell Young, DOT